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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,373	01/09/2002	Paul Brazhnik	059062-1151	5269

55388 7590 04/19/2007
ENTELOS, INC.
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EXAMINER

SILVER, DAVID

ART UNIT	PAPER NUMBER
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2128

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/040,373

Applicant(s)

BRAZHNİK ET AL.

Examiner

David Silver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>June 13 2006</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. The Instant Office Action is in response to Request for Continued Examination filed 1/31/2007 ("Remarks" failed on 1/8/2007).
2. Claims 1-38 are currently pending in Instant Application.
3. The Instant Application is not currently in condition for allowance.

Priority

4. Claimed priority has been acknowledged in previous Office Action.

Parent Data

10/040373

Claims Priority from Provisional Application

60/287702

Response to Arguments

Response: Duplicate Claims

5. **Background:**

"The Office Action alleges that claims 13 and 14 are duplicates, based on the interpretation of the term "similar" provided at page 20 of the Office Action dated 10 August 2005. The Examiner asserts that Applicants have acquiesced to the stated interpretation." (Remarks: page 18)

6. **Examiner Response:**

Applicant's arguments on the bottom of page 18 and top of page 19 have been fully considered and are found persuasive. Therefore, the duplicate claim objection has been withdrawn.

Response: Claim Interpretation

7. **Background:**

"The Office Action states that in view of the meaning of "simulation", the terms "representing", "representation" and their functional equivalents are interpreted as a mathematical function which is integrated." (Remarks: page 19)

8. **Applicants argue:**

"Applicant accepts the Examiner's interpretation with one exception. Claim 23 refers to the term "link representation." This claim explicitly recites

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a link representation from a set of predefined link representations, each predefined link representation in the set of predefined link representations being associated with a different mathematical relationship.

As used herein, the term "link representation" refers to the graphical illustration of a mathematical relationship. See in particular, paragraphs [0060] to [0082], which describe an exemplary illustration system, including such links, in detail. Accordingly, while a simple "representation" can be interpreted as a mathematical function capable of being integrates, a "link representation" is a graphical illustration of such a simple "representation." (Remarks: page 19)

9. **Examiner Response:**

Applicants are thanked for agreeing in the interpretation of the claim with one exception. Applicant's remarks have been noted.

Response: 35 U.S.C. § 102/103

10. **Background:**

"Claims 1-9, 24 and 29-32 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,582,366 to Porumbescu (hereinafter "Porumbescu")." (Remarks: page 19)

11. **Applicants argue:**

11.1 "While Porumbescu contemplates that consumption of fat, protein and carbohydrate will have different effects on blood glucose levels, this reference merely describes a simple equation to account for a delay in the effect of fat or protein consumption on blood glucose levels by assigning these macronutrients to compartments with an extended time course of exogenous glucose (see column 7 of Porumbescu). This is not a representation of metabolism of fat or protein.

11.2 As discussed in the Specification at page 8, paragraph [0035], metabolism is not merely a straight transition of fat or protein to glucose, delayed or not. Rather, metabolism of a macronutrient includes accounting for the digestion and absorption of the macronutrient, as well as the appropriate associated hormonal responses. Accordingly, claims 1, 7, and 24 are amended to specify that a representation of fat metabolism must include a representation of at least one biological process

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selected from the group consisting of regulation of adipose tissue uptake of free fatty acid, regulation of adipose tissue lipolysis, regulation of adipose tissue triglyceride esterification, hepatic lipoprotein regulation, muscle free fatty acid uptake, and muscle free fatty acid utilization.

- 11.3 A representation of protein metabolism must include a representation of at least one biological process selected from the group consisting of production of amino acids from carbohydrate in muscle, hepatic gluconeogenesis from amino acid substrate, oxidation of amino acids in muscle, oxidation of amino acids in liver, and regulation of skeletal muscle protein turnover in response to a stimulus selected from activity, exercise, fat mass, dietary composition, and insulin."

12. Examiner Response:

Applicant's arguments have been fully considered and found persuasive.

The 35 U.S.C. § 102 rejection has been withdrawn in view of Applicant's amendments and arguments both of which clarify invention and overcome the prior-art of record.

The 35 U.S.C. § 103 are rendered moot in view of the withdrawn rejection of patent claims.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. Claims 1-6, 10-38 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

MPEP 2106 recites, in part:

"...USPTO personnel shall review the claim to determine it produces a useful, tangible, and concrete result. In making this determination, the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather on whether the *final* result achieved by the claimed invention is "useful, tangible, and concrete."

- 13.1 The method claims do not produce a useful, tangible, and concrete final result. The steps of the method claims do not produce a useful, tangible, and concrete result. They merely recite a software algorithm, per se, which, for example, does not display, store, or otherwise provide a useful tangible output. Note exemplary claim 1 which only recites software steps and does not produce a useful tangible and concrete final result. See MPEP 2106 [R-5] (partially recited above).

- 13.2 As per independent claim 1 and dependents, the steps of identifying and combining do not

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produce a concrete useful and tangible **final** result.

13.3 As per independent claim 7 and dependents, the term "computer-readable memory" encompasses a carrier wave signal. The carrier wave signals *per se* do not produce a tangible final result. However, the last limitation recites a processor for executing the instructions which is a hardware element and therefore brings the claim into a statutory realm.

13.4 As per independent claim 10, the preamble recites a processor that is used to execute instructions recited within the claim limitations. The preamble, however, is not necessary for the life, meaning, and vitality of the claim limitations and thus not given patentable weight. The claim does not produce a concrete useful and **tangible final** result. Specifically, although the claim recites "providing a plurality of predefined defect indicators" it is possible that the act of providing is performed through an manipulation of abstract ideas therefore does not produce a tangible final result. Additionally, although the claim appears to provide a GUI to the user through which the user inputs information, the GUI is not used to provide back to the user the actual final result. Thus, the GUI does not render the claim statutory.

13.5 Regarding claims 16, 24, and 28 and their dependents, see rationally provided for independent claim 10.

13.6 Regarding claim 20 and its dependents, see rationale provided for independent claim 1.

Allowable Subject Matter

14. Claims 1-6, 10-38 are would be allowable if rewritten or amended to overcome the rejection(s) / objection(s), set forth in this Office action.

15. Claims 7-9 are allowable over the prior-art of record.

16. The reasons for allowance will be withheld until such time that the above-cited deficiencies are overcome.

Conclusion

17. Claims 1-6 and 10-38 are rejected.

18. Claims 7-9 are allowable for the prior-art of record.

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19. The Instant Application is not currently in condition for allowance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Silver whose telephone number is (571) 272-8634. The examiner can normally be reached on Monday thru Friday, 10am to 6:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached on 571-272-2279. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Silver
Patent Examiner
Art Unit 2128


KAMINI SHAH
SUPERVISORY PATENT EXAMINER